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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,229	09/18/2006	Martin David Hallett	37-74	9446
23117	7590	01/22/2009	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			BOWMAN, ANDREW J	
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
01/22/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/567,229	HALLETT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANDREW BOWMAN	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 July 2007.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 27-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 27-55 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/15/06.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

The examiner acknowledges the cancellation of claims 1-26 as well as the addition of claims 27-55. As such, claims 27-55 remain pending in the current application.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 27-51 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fearnot et al. (US5609629) in view of Feather et al. (WO02/49771) and further in view of Choy et al. (US6296910).

a. Regarding claims 27-30 and 36-39, Fearnot teaches that it is well-known to coat medical implants with layers containing active agents by electrostatic powder coating processes (abstract and column 13, lines 49-55). Fearnot fails to describe the details of the electrostatic powder coating operations. However, Feather shows that common electrostatic coating operations occur at where the deposition source is located 0.5 to 2.0mm from the article to be coated (claim 5) and after powder coating, the coatings are common formed into coherent coatings by a heating step (claim 27). One of ordinary skill in the art would consider it obvious to use the operational parameters of Feather in the coating operation of Fearnot because they are shown to be suitable parameters for that type of operation. Fearnot in view of Feather fails to teach where the article to be coated is rotated relative to the coating source. However it is the position of the examiner that 1) it is well-known in almost all coating operations to rotate work pieces relative to their deposition sources because it provides for easily obtained uniform coatings and it would be obvious to do so in this case and 2) Choy shows that it is well known to rotate substrates to be coated in electrostatic coating operations (claim 17). Further it would be considered obvious for one of

ordinary skill in the coating art to apply the general knowledge listed in 1) and incorporate the rotation of the workpiece of Choy into the process of Fearnout in view of Feather in order to obtain these more uniform coatings.

- b. Regarding claims 31-34, these techniques are known to be common methods of supplying power and potentials to electrostatic powder coating operations as shown in claims 6-9 of Feather.
- c. Regarding claim 35, Feather additionally teaches that this is a known method of terminating the coating process (claim 18).
- d. Regarding claim 40-51, it is the position of the examiner that the stents of Fearnout would be considered “generally cylindrical” (column 2, line 66 through column 3, line 4).
- e. Regarding claims 53-55, Fearnout teaches where the drug that is supplied is radioactive or is a thrombin inhibitor (claim 9).

5. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fearnout et al. (US5609629) in view of Feather et al. (WO02/49771) and further in view of Choy et al. (US6296910) and further in view of Weber et al. (USPGPub 2003/0185964).

- f. Regarding claim 52, the teachings of Fearnout in view of Feather and further in view of Choy are as shown above. Fearnout in view of Feather and further in view of Choy fails to teach any of the specific polymer materials to be coated list of claim 52. However, Weber shows that it is well-known to create a combination coating incorporating active agents and polyurethane (paragraph [0041]) to be coated by electrostatic deposition. One of ordinary skill in the art

would be motivated to use the formulations of Weber in the invention of Fearnott in view of Feather and further in view of Choy because they are shown to be suitable for deposition by electrostatic deposition on the same type of substrate (i.e. a stent (paragraph [0036])).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW BOWMAN whose telephone number is (571)270-5342. The examiner can normally be reached on Monday through Friday (7:30 to 5:00)EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/

Andrew J Bowman

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Supervisory Patent Examiner, Art Unit 1792

Examiner  
Art Unit 1792

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